

Exhibit 1

Part (1 of 2)

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Docket No. CV 11 3427

EVEREST REINSURANCE COMPANY, :
A/S/O FRITZ HOKEL and
SYM REALTY, :

Plaintiffs, :

-against- : DEPOSITION OF:

COVA CONCRETE CORP., SHARON : ISAAC
ENGINEERING, P.C., ORANGE : RABINOWITZ
COUNTY SUPERIOR CONCRETE, :
INC., SIMON DUSHINSKY, THE
RABSKY GROUP, LLC, HSD :
CONSTRUCTION, LLC, THE GOLD
DEVELOPMENT & MANAGEMENT, :
LLC, OSCAR P. WALTERS and
DEMERARA ENGINEERING, PLLC, :

Defendants. :

TRANSCRIPT of testimony as taken by and
before PATRICIA A. SANDS, a Shorthand Reporter
and Notary Public of the States of New York and
New Jersey, at the offices of HAVKINS ROSENFELD
RITZERT & VARRIALE, LLP, 1065 Avenue of the
Americas, New York, New York, on Thursday,
August 9, 2012, commencing at 11:04 in the
forenoon.

1 A P P E A R A N C E S:

2
3 METHFESSEL & WERBEL
4 450 Seventh Avenue, Suite 1400
5 New York, New York 10123
6 BY: FREDRIC PAUL GALLIN
7 For the Plaintiff
8 212 947-1999

9 WHITE & MC SPEDON, PC
10 875 Avenue of the Americas
11 New York, New York 10001
12 BY: FRANCES NOREK HATCH, ESQ.
13 For the Defendant Cova
14 212 564-6633

15 MORGAN MELHUISE ABRUTYN
16 651 West Mount Pleasant Avenue, Suite 200
17 Livingston, New Jersey 07039-1673
18 BY: ERIC L. POLISHOOK, ESQ.
19 For the Defendant Sharon Engineering
20 973 994-2500

21 ABRAMS GARFINKEL MARGOLIS BERGSON, LLP
22 237 West 35th Street, 4th Floor
23 New York, New York 10001
24 BY: BRETT L. KULLER, ESQ.
25 For the Defendant Orange County
Superior Concrete
646 473-7592

1 A P P E A R A N C E S, continued.

2

3 HAVKINS ROSENFELD RITZERT & VARRIALE, LLP
1065 Avenue of the Americas, Suite 800
4 New York, New York 10018

BY: JONATHAN A. JUDD, ESQ.

5 For the Defendants Dushinsky, HSD, Gold
and the Witness

6 212 488-1598

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9

10 ALSO PRESENT:

11 Joel and Martin Falcowitz, Orange County
12 Bella Livshitz, Transperfect

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I N D E X

WITNESS EXAMINATION

ISAAC RABINOWITZ

Mr. Gallin 6

Mr. Polishook 96

E X H I B I T S

NUMBER DESCRIPTION PAGE

RABINOWITZ

1 Gold contract 34

2 Sharon contract 118

3 Letter 118

4 Letter 118

Request for production ... 22, 46, 52, 73, 106

(Exhibits retained by counsel.)

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3
4 IT IS HEREBY STIPULATED AND AGREED,
5 by and between the attorneys for the respective
6 parties hereto, that this examination may be
7 sworn to before any Notary Public.

8
9 IT IS FURTHER STIPULATED AND AGREED
10 that the sealing and filing of the said
11 examination shall be waived.

12
13 IT IS FURTHER STIPULATED AND AGREED
14 that all objections to questions except as to
15 form shall be reserved for trial.

1 I S A A C R A B I N O W I T Z,
2 11 Lynch Street
Williamsburg, New York,
3 whose interpreter having been
affirmed and having been affirmed,
4 was examined and testified as follows:
5

6 EXAMINATION

7 BY MR. GALLIN:

8 Q Mr. Rabinowitz, have you ever been
9 deposed before?

10 A No.

11 Q Do you understand some English?

12 A Yes.

13 Q There is no problem using a
14 translator, but I frequently find with
15 witnesses who understand a bissle of English
16 that they start not using the translator. I
17 know this because they start answering the
18 question before it's translated.

19 If we're going to use the translator it
20 means we have to use the translator. Even if
21 you understand the question in English, and I
22 can see you nodding, you have to wait until
23 it's translated and you have to give your
24 answer in Hebrew. Okay?

25 A Yes.

1 Q What's your date of birth?

2 A January 18, 1961.

3 Q Where were you born?

4 A In Israel.

5 Q What's your citizenship?

6 A Dual citizenship.

7 Q When did you get the American
8 citizenship?

9 A I got my citizenship five years ago,
10 but I had a Green Card before and I'm here
11 about 20 years.

12 Q Do you go back and forth?

13 A Yes.

14 Q Next construction, you have to give
15 verbal responses. We can see which way you're
16 shaking your head, but the translator is not
17 supposed to translate a shake.

18 A Okay.

19 Q Where do you live?

20 A New York.

21 Q Where?

22 A Williamsburg.

23 Q Do you have an address?

24 A Eleven Lynch.

25 Q How long have you lived there?

1 A Nine years.

2 Q What's your highest level of
3 education?

4 A What kind of education do you mean?

5 Q Yeshiva?

6 A Yes.

7 Q Did you graduate?

8 A Yes.

9 Q What year?

10 A I studied until I was 25 years old.

11 Q Any education outside of the Yeshiva,
12 formal education?

13 A I studied a lot of things. The
14 question is where do you want to get to with
15 this story?

16 Q Did you go to college?

17 A No.

18 Q Any formal English language
19 universities, colleges?

20 A Just what I learned from the streets.

21 Q By whom are you employed?

22 A My own company.

23 Q What's the name of your company?

24 A HSD Rabsky, HSD.

25 Q Tell me about Mr. Rabsky.

1 A Rabsky is connected from two names,
2 Rabinowitz and Dushinsky.

3 Q Who is Simon Dushinsky?

4 A It's my partner.

5 Q What's Gold Development?

6 A It's a person who I was employed
7 with.

8 MR. KULLER: He was employed by Gold?

9 Q What is the business of HSD?

10 A Construction.

11 Q How long has it been in business?

12 A I don't remember. There is a lot of
13 companies, but we worked together already for
14 18 years.

15 Q How long have you been in
16 construction?

17 A I was in construction in Israel.

18 MR. JUDD: Was HSD in business for 18
19 years? Is that the question you asked?

20 MR. GALLIN: You can ask that
21 question. I didn't ask that question, but
22 you can ask it.

23 MR. KULLER: Ask when the corporation
24 was formed.

25 Q When was HSD formed?

1 A I don't remember.

2 Q More than ten years?

3 A I don't remember. I don't know.

4 Q Who were the principals of HSD?

5 A Me and Dushinsky.

6 Q Who were the principals in Gold
7 Development?

8 A Gold family, I don't know. I don't
9 know who they are.

10 Q When were you in construction in
11 Israel?

12 A I was ten years there.

13 Q Did you have your own company?

14 A Yes.

15 Q Where were you located?

16 A Jerusalem.

17 Q What were you building?

18 A Same thing, buildings.

19 Q 100-story skyscrapers, two-family
20 houses? There is a difference.

21 A Family housing.

22 Q How big?

23 A About three four, floors.

24 Q How did you get training in
25 construction?

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1 A From using it.

2 Q In Jerusalem did you do a lot of
3 masonry work?

4 A Not many, no.

5 Q What were you building with in
6 Jerusalem?

7 A What's the question?

8 Q Your typical house in Jerusalem, are
9 you building it out of wood or are you building
10 it out of masonry?

11 MR. JUDD: Or something else.

12 Q Or something else.

13 A In Israel there is no wood, you don't
14 build with wood. There is either rock or
15 cement.

16 Q So most of the houses you were
17 building in Israel were cement; correct?

18 A Yes.

19 Q Was it poured concrete or was it
20 cement block, or something else or a
21 combination? Tell me.

22 MR. JUDD: Excuse me -- well, go
23 ahead, ask the question and then I will
24 state my objection.

25 A In Israel all of the buildings are

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1 rock and cement. Inside we construct blocks.

2 MR. JUDD: I just object, because you
3 are not asking which buildings in
4 particular.

5 MR. KULLER: Could you read back the
6 answer that he gave, please.

7 MR. GALLIN: If he's building family
8 houses in Jerusalem they are all made out
9 of block.

10 MS. HATCH: Could we just have the
11 answer read back.

12 (The answer was read back.)

13 Q Inside of the buildings are you
14 building the walls with cement blocks?

15 A At the time that I was building in
16 Israel there was not a sort of wall that
17 separates the rooms. At the time that I was
18 building in Israel, we were building blocks to
19 separate the rooms and they were using cement
20 and rock on the outside. Maybe outside of
21 Jerusalem there is a different way, but this is
22 what I am familiar with.

23 MR. KULLER: Could you just read that
24 back.

25 (The answer was read back.)

1 Q As I understand your answer, room
2 dividers inside the building you're using
3 cement block?

4 A Yes.

5 Q Outside walls are cement or rock?

6 A They are both.

7 Q The cement, was it built up cement
8 block or were you pouring concrete?

9 A Pour concrete.

10 Q When you are pouring a concrete wall
11 does the concrete start out as being wet?

12 MR. JUDD: Are you referring to when
13 he was in Israel?

14 MR. GALLIN: Yes.

15 MR. JUDD: I'm just going to object
16 to form.

17 MR. POLISHOOK: I object to the form.

18 Q Let me ask you a question.
19 Can you pour hard, dry concrete?

20 A No.

21 Q If you're pouring concrete it has to
22 start out wet?

23 A Right.

24 Q And as it dries it sets?

25 A Right.

1 Q Dry concrete has structure, has
2 strength; correct?

3 A Yes.

4 Q Wet concrete doesn't have any
5 strength?

6 MR. POLISHOOK: Object to the form.

7 MR. JUDD: Object to the form as
8 well.

9 Q Wet concrete is a liquid; correct?

10 A It's a liquid, it has to be in a
11 certain form.

12 Q In order to use wet concrete properly
13 you have to pour it into a form which keeps it
14 in place until it sets?

15 MR. JUDD: Objection to the form, to
16 the word "properly."

17 MR. POLISHOOK: I will object also.

18 MR. GALLIN: Go ahead, let him answer
19 the question.

20 MR. JUDD: Do you understand the
21 question?

22 MR. GALLIN: It isn't translated yet.

23 MR. JUDD: Okay, sorry.

24 A I will explain to you how you work in
25 Israel. I want to explain how I'm building in

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1 Israel. In Israel you put a piece of wood with
2 block on the inside and from the outside you
3 put a rock. All right. So the way we do it in
4 Israel, okay, we put a strengthening on the
5 inside with wood. On the outside we put a sort
6 of a block from rock. We have to only do it
7 two rows at a time. After we're done, we pour
8 the concrete over the whole entire two rows.

9 Okay. So basically it's impossible to
10 pour the concrete, you know, one time in a
11 wall. We have to do it two rows one block at a
12 time in order for that to dry, then we do
13 another two rows the next day and another two
14 rows the next day. That's how we build in
15 Israel.

16 MR. KULLER: Off the record.

17 (Discussion off the record.)

18 MS. HATCH: If the record would
19 please reflect so we're not always
20 objecting, an objection by any defendant
21 is an objection by all.

22 MR. JUDD: That's fine.

23 MR. GALLIN: That's fine.

24 MR. JUDD: I just want to understand,
25 he said that he put two rows down of rock,

1 is that what he said?

2 MR. KULLER: Like a row of rock and
3 then another row of rock and then wood on
4 one side?

5 THE INTERPRETER: No, wood inside the
6 rock for strength inside each rock.

7 Q When you're done building your wall
8 you have a concrete wall with a rock veneer on
9 the outside?

10 A Right.

11 Q To me it sounded like a cookie. I
12 got two wafers on the outside and I got a
13 cement filling in the middle.

14 A Yes. And there is the wood that
15 holds everything together in the middle. The
16 wood holds the concrete.

17 Q So it was fair to say you had ten
18 years of experience dealing with concrete in
19 Israel before you started building in Brooklyn?

20 A Right.

21 Q When did you start building in
22 Brooklyn?

23 A Immediately when I came.

24 Q Give me a year.

25 A When I first came here I started

1 building in upstate.

2 Q In response to that answer I will
3 change the question.

4 When you first started doing your building
5 work you were building in upstate New York?

6 A In upstate New York, in the United
7 States, yes.

8 Q Orange County?

9 A Yes.

10 Q Kiryas Joel? K-I-R-Y-A-S, J-O-E-L,
11 two words.

12 A It's Monroe. Town of Monroe.

13 MR. KULLER: Off the record.

14 (Discussion off the record.)

15 Q Explain for them how this cookie is
16 built.

17 A From the outside there is rock, row
18 by row. In the middle is concrete. In the
19 inside we have to put something like a piece of
20 wood to hold the concrete until it dries.

21 Q And then as you're building your
22 building, do you use that wood as a wall or do
23 you put cement block up, do you put
24 sheetrock -- what do you use?

25 A After we finish we take the wood out

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1 and we put like a very light -- like a very
2 light layer of cement, you know, it's like when
3 you take the paint out you use the same
4 material.

5 MR. KULLER: Off the record.

6 (Discussion off the record.)

7 Q So you started building in Kiryas
8 Joel, what years?

9 A I don't know.

10 Q Are you still building in Kiryas
11 Joel?

12 A No.

13 Q What kind of buildings were you
14 building in Kiryas Joel?

15 A Everything was residential.

16 Q Were you using brick?

17 A No.

18 Q What were you using?

19 A The basement was cement and the rest
20 was wood, stucco.

21 Q The basement, was that poured cement
22 or were you using cement block?

23 A The few first feet are all cement and
24 the rest of it is blocks.

25 Q And when you pour the cement you got

1 to use a wooden form; right?

2 MR. KULLER: Objection.

3 MR. POLISHOOK: Object to form.

4 MR. JUDD: Objection.

5 THE WITNESS: Yes, we need that.

6 Q Do you use anything besides wood for
7 your forms when you're pouring the concrete?

8 MR. JUDD: Where?

9 MR. GALLIN: In Kiryas Joel.

10 MR. POLISHOOK: I'm just going to
11 object to form. My objection is going to
12 be it's not do you, it's did you, because
13 he's not professional --

14 MR. KULLER: We need a -- objection
15 is fine.

16 MR. POLISHOOK: I'm saying that for
17 the future so I don't have to do it each
18 time.

19 MR. JUDD: That's why I asked what
20 period he was referring to.

21 Q In the past -- did you in the past
22 when you poured concrete in Kiryas Joel, did
23 you have to use a form when you poured cement
24 or concrete?

25 A Yes.

1 Q And what did you use for your form?

2 A There is, you know, forms that go for
3 the concrete.

4 Q What are they made out of?

5 A Wood. They are made of wood with
6 like this protective -- I mean, it's a
7 specialized form for that.

8 Q Are these prefabricated forms or
9 would your carpenters have to build the forms?

10 A These forms they come ready to order,
11 they are specialized ready to order for
12 concrete. Sometimes yes, you might need to
13 tweak like a corner or two; however, these
14 forms come ready to pour in concrete.

15 MR. JUDD: I'm just going to object
16 to that question on the ground that it
17 implies that he always used the exact same
18 form on every job that he did at Kiryas
19 Joel.

20 MR. GALLIN: Fine.

21 Q At some point in time did you move
22 your operations from Kiryas Joel to Brooklyn?

23 A At Kiryas Joel I worked like four
24 years, something like that. And after that we
25 went to Brooklyn.

1 Q How long have you been building in
2 Brooklyn?

3 A Fourteen, fifteen years.

4 Q And has Mr. Dushinsky always been
5 your partner?

6 A Yes.

7 Q And have you and Mr. Dushinsky had
8 different corporations over the years?

9 A No.

10 Q Has it always been HSD Construction?

11 A No.

12 Q What's the name of the company that
13 you -- you and Mr. Dushinsky, do you have a
14 corporation?

15 A We had all of our corporations
16 together, there were many names.

17 Q Do you have one named corporation?

18 A Today the main name is Rabsky.

19 (Martin Falcowitz entered the deposition,
20 representative of Orange County.)

21 (Recess.)

22 (The question and answer were read back.)

23 Q When was the Rabsky Group formed?

24 A The dates I can't really give you, I
25 don't know. I don't remember.

1 Q Give me a decade.

2 A I don't know.

3 Q 1980s, 1990s, the 2000s?

4 A I don't know.

5 MR. POLISHOOK: We're just going to
6 follow-up with a demand, we'll follow-up
7 in writing for that information.

8 (Request for production.)

9 Q Does the Rabsky Group have corporate
10 meetings?

11 A We are two partners, we do everything
12 together. Twenty times a day we have meetings.

13 MR. JUDD: I just want to say all
14 discovery requests will be taken under
15 advisement, and I ask that they all be put
16 into writing, please.

17 MR. POLISHOOK: And obviously, a
18 request made by one party is a request
19 made by everyone.

20 A I would like just to make one point
21 clear. When you ask me about how, you know, we
22 built in Israel, I answered your question as to
23 how, you know, the building is occurring in
24 Israel. I did not actually perform the
25 building myself, I would just hire a

1 subcontractor. And every subcontractor would
2 do as they are supposed to do and build as they
3 are supposed to build.

4 Q You were just a developer of the
5 buildings?

6 A Yes.

7 Q How many buildings did you build in
8 Israel?

9 A Around 15 to like 20, something like
10 that.

11 Q The subcontractors that you hired
12 were they Hasid?

13 A No.

14 Q The buildings that you were building,
15 were they for Hasid?

16 A Yes. Most of my workers were Arabs.

17 Q Did they teach you anything about how
18 to work with concrete?

19 A No.

20 Q Did you watch what they were doing?

21 A Yeah, I was watching, but there was
22 an engineer that was coming to check.

23 Q You have personal knowledge, you know
24 that when you work with wet concrete you need a
25 form?

1 MR. KULLER: Objection.

2 MR. JUDD: Object to the form.

3 MR. POLISHOOK: Objection.

4 MR. GALLIN: Good. Let him answer
5 the question.

6 MR. JUDD: Do you understand that
7 question?

8 THE WITNESS: I understand. The
9 answer is yes.

10 Q You don't need any subcontractor to
11 tell you that?

12 A I don't need one, no.

13 Q Do you know why we are here?

14 MR. JUDD: Objection.

15 THE WITNESS: Yes.

16 Q Why are we here?

17 A Because there is a claim.

18 Q Why is there a claim?

19 A Why? I don't understand.

20 Q Were you building a building on North
21 First Street?

22 MR. JUDD: Objection to the form.

23 Q Did you have any connection
24 whatsoever with a building at 50 North First
25 Street?

1 A Yes.

2 Q You've heard of that location?

3 A Yes.

4 Q It's in Williamsburg; right?

5 A Yes.

6 Q How far is that from where you live?

7 A Seven, ten minutes.

8 Q How is it that you heard of this

9 building at 50 North First Street?

10 A What's the question?

11 Q You said you heard of this building
12 at 50 North First Street?

13 A I know that there is an agreement
14 between me and Gold that I am to be the
15 developer.

16 Q Who owned the property?

17 A Gold.

18 Q Was there a new building going up at
19 that location in 2009?

20 A Somebody started building the
21 building before me, and I walked in in the
22 middle.

23 Q When did you walk in?

24 A Somewhere in 2009.

25 Q Have you ever heard of a building at

1 48 North First Street?

2 A What's the question?

3 Q You're building a building at 50
4 North First Street; right?

5 A Yes.

6 Q Did the building exist in a vacuum?

7 MR. JUDD: Do you understand that?

8 A So like I already said, I came in in
9 the middle. There was a building already with
10 steel -- well, let's put it this way.

11 There was a building in the back -- there
12 were two buildings, a building in the back and
13 a building in the front. The building in the
14 back was already basically built with concrete,
15 and the building -- concrete and steel -- and
16 the building in the front was mostly steel, and
17 I was supposed to finish that building.

18 Q Now the --

19 A I was supposed to finish both of the
20 buildings.

21 Q Now the building in the front, as I
22 stand on First Street and look at that
23 building, was there another building to the
24 right?

25 A Yes. There was one building on the

1 right and one building on the left.

2 Q At some point in time did something
3 happen to the building on the right?

4 A Yes.

5 Q What happened?

6 MR. POLISHOOK: Object to form.

7 MR. GALLIN: No, he's got to answer
8 the question. He can object all he wants.

9 MR. POLISHOOK: If I object, I have
10 no control over the witness answering.
11 I'm just objecting to form. I'm not
12 asking him not to answer.

13 MR. JUDD: Do you understand what was
14 asked?

15 MR. GALLIN: He knows exactly what
16 was asked.

17 THE WITNESS: The question was what
18 happened?

19 Q What happened to the building on the
20 right?

21 MR. JUDD: On a particular day?

22 Q Any time, tell me.

23 MR. JUDD: At any time after he
24 started working there?

25 MR. GALLIN: Yes.

1 A I have signed a contract with the
2 cement company that they are supposed to finish
3 the cement on the two sides of the building, as
4 well as finish the elevators in that building.

5 Q What happened to the building on the
6 right?

7 A When they were going to pour concrete
8 on the third floor on the right side, the wall
9 collapsed from the pressure of the cement. On
10 the third floor.

11 Q When you are doing work at 50 North
12 First Street is something bad supposed to
13 happen to the building on the right?

14 MR. JUDD: Objection.

15 MR. POLISHOOK: Objection to form.

16 MR. GALLIN: He's got to answer the
17 question.

18 MR. JUDD: Do you understand that
19 question?

20 THE WITNESS: Yes.

21 MR. JUDD: Okay.

22 THE WITNESS: If you do the right
23 job, then it's not supposed to happen.

24 Q And if something happens to the
25 building on the right that means that the job

1 wasn't being done right?

2 MR. POLISHOOK: Objection.

3 MR. JUDD: Objection.

4 MR. POLISHOOK: Objection to form.

5 MS. HATCH: Objection.

6 THE WITNESS: Whoever did that job
7 did not do it well, yes.

8 Q A mistake was made; correct?

9 MR. JUDD: Objection.

10 MR. POLISHOOK: Objection.

11 MS. HATCH: Objection.

12 THE WITNESS: Yes.

13 Q If construction work is being done on
14 the building you're building, wet concrete is
15 not supposed to punch a hole in the wall of the
16 building next door?

17 MR. POLISHOOK: Objection.

18 MR. JUDD: Objection to form.

19 MR. POLISHOOK: When you say "you"
20 are you asking HSD, are you asking anyone
21 else in particular? That's my objection.

22 MR. GALLIN: I'm discussing the job
23 site in general.

24 MR. POLISHOOK: Objection, compound.

25 MR. JUDD: That's why I objected.

1 MR. GALLIN: What's your objection?

2 MR. JUDD: To the extent that
3 you're --

4 MR. POLISHOOK: Mine is to the extent
5 that there are multiple defendants in this
6 action, and if you're asking him
7 particularly, I don't think he is an
8 expert and can give a view as to anyone,
9 it hasn't been broken down, but I will
10 object to form. He can answer all of the
11 questions, I'm not telling him not to
12 answer.

13 Q If there is a construction project
14 going on at 50 North First Street, is wet
15 concrete supposed to end up on the inside of
16 48 North First Street on the third floor?

17 A I don't understand the question.

18 Q At some point in time did wet
19 concrete end up inside of 48 North First
20 Street?

21 A Yes.

22 Q And did that wet concrete initiate at
23 50 North First Street?

24 A What do you mean "initiated"?

25 Q Was it being poured at 50 North First

1 Street?

2 A Yes.

3 Q And we can agree that the concrete
4 being poured at 50 North First Street ended up
5 inside 48 North First Street because it broke
6 the wall?

7 MR. JUDD: Object to the form.

8 If you can, answer.

9 THE WITNESS: If it did enter there,
10 then yes.

11 Q Were you there that day?

12 A Yes.

13 Q Did you see the hole in the wall
14 yourself?

15 A Yes.

16 Q So there is no question at all from
17 your own personal observation that as a result
18 of construction activities at 50 North First
19 Street a hole ended up in a wall at 48 North
20 First Street?

21 MR. JUDD: Object to form.

22 THE WITNESS: Yes.

23 Q And that shouldn't have happened;
24 should it?

25 MR. JUDD: Object to form.

1 THE WITNESS: If you do the correct
2 job then it shouldn't have happened.

3 Q So based on your observations
4 somebody didn't do a correct job; did they?

5 MR. JUDD: Objection to form.

6 MR. POLISHOOK: Objection.

7 MS. HATCH: Asked and answered.

8 MR. KULLER: Objection.

9 THE WITNESS: Right.

10 Q Were you the general contractor at 50
11 North First Street?

12 A I'm the developer, yes.

13 Q I thought Gold was the developer?

14 A Yeah, I signed with Gold that I have
15 to make it, yes.

16 MR. JUDD: He said that Gold was the
17 owner, I believe.

18 Q Was Gold the developer?

19 A He was the owner.

20 Q Who was financing the project?

21 A The bank.

22 Q Who had the loan, Gold or you?

23 A Gold.

24 Q So Gold was responsible for arranging
25 the financing for the project; correct?

1 A Yes.

2 Q Did any of your companies have
3 ownership interest in 50 North First?

4 A No.

5 Q Were you just there as the overseeing
6 contractor?

7 MR. JUDD: Object to form.

8 THE WITNESS: Right.

9 Q Which one of your entities was the
10 overseeing contractor?

11 THE INTERPRETER: I'm sorry, the
12 interpreter is asking "entity", what is
13 that?

14 Q Which one of your corporations was
15 the overseeing contractor?

16 MR. JUDD: Object to form.

17 Do you understand that question?

18 THE WITNESS: We work under the name
19 of HSD and Rabsky. We work under the name
20 HSD, and the owner of HSD is Rabsky, but
21 it's the same thing.

22 MS. HATCH: Can I have that read
23 back, please.

24 (The answer was read back.)

25 Q Did you have a contract with Gold?

1 A Yes.

2 Q Did one of your companies sign a
3 contract with Gold?

4 A Yes, they signed.

5 Q Which company signed the contract?

6 A I don't remember.

7 Q Was it HSD, was it Rabsky or some
8 other entity?

9 A I don't remember.

10 (Exhibit 1 marked for identification.)

11 Q The question is can you read English?

12 A I can confirm that the signature is
13 mine.

14 MR. POLISHOOK: Did he answer --

15 MR. GALLIN: He doesn't read English.

16 MR. POLISHOOK: Is that the -- he
17 doesn't read English, can we just confirm
18 that on the record.

19 Q You don't read English?

20 A No.

21 Q Do you understand that contract?

22 A If I understand, no.

23 Q Did you know what you were signing
24 when you signed it?

25 A I know that my partner saw it and it

1 was good with him.

2 Q Why did you sign it and not your
3 partner?

4 A It's the same thing.

5 Q Does your partner read English?

6 A Yes.

7 Q Was that contract signed before the
8 hole got punched in 48 North First?

9 MR. POLISHOOK: Objection.

10 THE WITNESS: This is what I signed
11 when we finished the deal between us.

12 Q And was that before the concrete
13 ended up inside of 48 North First?

14 A Yes.

15 Q Does that contract identify which one
16 of your entities was involved in this job?

17 A Yes.

18 Q Which one?

19 A HSD.

20 Q Can you read where HSD is put down,
21 do you recognize that even though it's written
22 in English and not in Hebrew?

23 A Yes.

24 Q As general contractor what was your
25 company's job in connection with this job site?

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1 MR. JUDD: Object to the form.

2 THE WITNESS: Let me rephrase the
3 question.

4 Q What was your understanding of what
5 your company's job was in connection with this
6 construction site?

7 A To finish contracts with all of the
8 subcontracts, everybody what they have to do.
9 To get permits from the Building Department,
10 insurance for the building. To deal with all
11 of the --

12 MR. KULLER: Can you just read back
13 that answer, please. The question and
14 answer, please.

15 (The question and answer was read back.)

16 Q When you first got involved with this
17 project the building was partially built?

18 A I already explained before what stage
19 the building was at.

20 Q The steel structure was already up?

21 A Eighty-five percent of it.

22 Q Did you have to do any steel work at
23 the project?

24 A Yes.

25 Q Was that before or after the concrete

1 incident?

2 A So some of it I was supposed to do
3 before this happened, some of it I was supposed
4 to do after this happened. And some of it we
5 started changing, because the Building
6 Department came and said that part of the steel
7 of the structure wasn't safe.

8 Q The steel that wasn't safe, was that
9 steel you had put up or somebody else had put
10 up?

11 MR. JUDD: Object to form.

12 THE WITNESS: Somebody else put up.

13 Q Who was the prior contractor, do you
14 know?

15 A There is a name of a company, I don't
16 know how to like write it to spell it.

17 Q Not that important.

18 Do you know why they were replaced and you
19 got the job?

20 A No.

21 Q Had you done work for Gold before?

22 A No.

23 Q Had you built buildings before where
24 you were responsible or one of your companies
25 was responsible for the financing?

1 A Yes.

2 MS. HATCH: Can I have the question
3 read back.

4 (The question was read back.)

5 Q Was it your understanding that your
6 company had any role in overseeing the work of
7 the subcontractors?

8 MR. JUDD: Object to form.

9 THE WITNESS: What's the question?
10 What do you mean by "responsible," for
11 what?

12 Q Did you have any interaction with the
13 subcontractors?

14 A To see -- I don't understand.

15 Q Do you know what a general contractor
16 is?

17 A I know that I have to -- I have to
18 arrange all of the subs, but the question is --
19 I mean, what's the question?

20 Q Who made the contracts with the
21 subcontractors, Gold or you?

22 A Me.

23 Q Do you pay your subcontractors before
24 they do the work or after they do the work?

25 A I usually pay them a small amount

1 before and then as they work.

2 Q And before a subcontractor gets paid
3 you made sure they did the work; correct?

4 A I mean, you know, the work, it's not
5 just me that checks the work, the engineer from
6 the bank comes to check, they send like a team
7 from the bank to check that the work was done
8 and to check how it was done. And then after
9 that we give them the money.

10 Q Do you participate in this overseeing
11 of the subcontractor's work?

12 MR. JUDD: Object to form.

13 THE WITNESS: If you're asking if I
14 come to check if they are working, yes.
15 If you're asking me if I have to check how
16 they are working, if they are doing what
17 they are supposed to be doing, no.

18 Q Does anybody from your company check
19 to see if the subcontractors are doing the job
20 right?

21 A Sorry, what's the question?

22 MR. GALLIN: Read it back.

23 (The pending question was read back.)

24 MR. JUDD: Object to form.

25 You can answer.

1 THE WITNESS: I was there every day,
2 sometimes even a few times a day and I was
3 checking if they work, right.

4 Q Was there a structural engineer
5 associated with this project?

6 MR. POLISHOOK: Object to form.

7 THE WITNESS: Yes.

8 Q Who was it?

9 A Usually what I like to do -- there
10 was already an engineer, a mechanical engineer
11 there that was working with the last contractor
12 that Gold hired. I usually like to hire my own
13 engineers that I had worked with in past
14 buildings that I was building. When that thing
15 happened with the concrete, there was two, but
16 one was still with the Building Department.

17 MR. JUDD: What?

18 MR. GALLIN: Okay.

19 MR. JUDD: We'll clear it up.

20 MR. GALLIN: All right.

21 Q Is there an engineer you like to work
22 with?

23 A Yes.

24 Q Is that Sharon?

25 A Yes.

1 Q When Gold first started this project
2 they had to submit plans to the Building
3 Department; correct?

4 A I'm sorry.

5 Q When this project starts, Gold has to
6 get a new building permit; correct?

7 MR. JUDD: Object to form.

8 THE WITNESS: Yes.

9 Q In order to get a new building permit
10 they had to submit plans for approval by the
11 Building Department?

12 MR. POLISHOOK: Object to form.

13 THE WITNESS: That's right.

14 Q And those plans had to be stamped by
15 either a registered architect or a professional
16 engineer?

17 A Yes, both.

18 MR. POLISHOOK: Are you asking when
19 Gold took over the job -- forget it.
20 Withdrawn.

21 Q Did you ever see that set of plans?

22 A Yes.

23 Q Who stamped the plans, the original
24 plans of this building, who stamped them?

25 A I had the plans from the engineer,

1 from the architect and from the Building
2 Department.

3 Q Let's focus on the engineer.

4 The steel work, the concrete, that has to
5 get approved by a structural engineer; correct?

6 MR. POLISHOOK: Object to form.

7 THE WITNESS: Yes.

8 Q Have you ever heard the name Demerara
9 Engineering, D-E-M-E-R-A-R-A, Engineering?

10 A Yes.

11 Q Was Demerara the original engineer
12 who stamped the plans for the Building
13 Department?

14 A Yes.

15 Q Was Demerara still on the project
16 when your company took it over?

17 A Yes.

18 MR. POLISHOOK: Object to form.

19 Q Did you ever meet with Oscar
20 Demerara?

21 A No.

22 Q Do you know who Oscar Walters is?

23 A I only met with the architect,
24 everything else went through Gold. Every
25 question that was asked, the answer went

1 through Gold.

2 Q Who was the architect?

3 A I don't remember, but I had his
4 plans..

5 Q Did you ever meet with Sharon at the
6 job site?

7 A Yes.

8 Q Was Sharon ever at the job site
9 before the concrete incident?

10 MR. POLISHOOK: Object to form.

11 THE WITNESS: Yes.

12 MR. JUDD: Excuse me just one second.
13 Off the record.

14 (Discussion off the record.)

15 Q For what purpose did you meet Sharon
16 at the job site before the concrete incident?

17 MR. POLISHOOK: Object to form.
18 He didn't say he met him.

19 MR. JUDD: I will rephrase the
20 question.

21 MR. KULLER: Off the record.

22 (Discussion off the record.)

23 Q Did you meet with Sharon at the job
24 site before the concrete incident?

25 A Yes.

1 Q Why did you meet with Sharon at the
2 job site before the concrete incident?

3 A Because I wanted to replace the
4 engineer.

5 Q Had Sharon taken over as a
6 replacement engineer before the concrete
7 incident?

8 MR. POLISHOOK: Object to form.

9 THE WITNESS: You mean legally?

10 Q Had Sharon given any advice in
11 connection with this project before the
12 concrete incident?

13 MR. POLISHOOK: Objection to form.

14 THE WITNESS: Yes.

15 Q What advice had Sharon given
16 concerning this project before the concrete
17 incident?

18 MR. JUDD: Same objection.

19 THE WITNESS: He gave me plans of how
20 to do the concrete.

21 Q The original plans did not call for
22 poured concrete walls; did they?

23 MR. JUDD: Object to form.

24 You can answer.

25 THE WITNESS: As far as I remember

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1 there were a few plans. There was one
2 plan that was for blocks, there was one
3 plan that was an optional plan, which
4 means concrete or blocks. And Sharon
5 wanted to do concrete.

6 Q And Sharon wanted to do the concrete
7 before the damage was suffered next door;
8 correct?

9 MR. POLISHOOK: Object to form.
10 You asked for a state of mind, you
11 have to ask what was actually
12 communicated.

13 MR. GALLIN: We can argue about that
14 later.

15 MR. POLISHOOK: Fair enough.

16 MR. JUDD: Note my objection also,
17 please.

18 MR. GALLIN: Let him answer the
19 question.

20 MR. JUDD: Go ahead, if you can.

21 THE WITNESS: What's the question?

22 Q Did Sharon express to you that you
23 should be doing poured concrete before the
24 damage was suffered to the next door building?

25 MR. JUDD: Object to form.

1 THE WITNESS: Sharon made a plan.

2 Q He made a plan for poured concrete?

3 MR. POLISHOOK: Objection to form.

4 THE WITNESS: Yes.

5 Q And that was before the damage was
6 suffered next door?

7 A Yes.

8 MR. KULLER: We will call for
9 production of all plans by Sharon for the
10 poured concrete.

11 (Request for production.)

12 MR. POLISHOOK: You can make the
13 demand for him, but there aren't --

14 MR. KULLER: Eric, you're not getting
15 summary judgment.

16 MR. POLISHOOK: I'm just stating for
17 the record I think there is a
18 mischaracterization.

19 THE WITNESS: Okay, so there was one
20 point about Sharon. Sharon's plans were
21 not yet approved by the Building
22 Department.

23 MR. JUDD: As of the date of the
24 accident?

25 THE WITNESS: Yes.

1 Q Were you doing work -- was work
2 taking place on the day of the accident based
3 on plans that had not yet been approved?

4 MR. JUDD: Object to form.

5 THE WITNESS: No.

6 MS. HATCH: Can I have the question
7 read back, please.

8 MR. GALLIN: I asked him whether
9 plans had been done --

10 MS. HATCH: I'm sorry, if I could
11 just have the question read back. Because
12 the way you phrased it --

13 MR. GALLIN: Go ahead.

14 MS. HATCH: The question and the
15 answer, please.

16 (The question and answer were read.)

17 Q On the day of the accident a concrete
18 wall was being poured; correct?

19 A Yes.

20 Q And that was pursuant to plans
21 prepared by Sharon?

22 MR. POLISHOOK: Objection to form.

23 THE WITNESS: I had two plans. There
24 was a plan from the old architect with
25 concrete as well.

1 Q Was that poured concrete?

2 A Yes.

3 Q Were there any notes on that plan for
4 poured concrete as to how the concrete pour was
5 supposed to take place?

6 MR. POLISHOOK: Objection to form.
7 There is no foundation that he even knows
8 how to read plans.

9 MR. JUDD: Objection. I agree with
10 that.

11 THE WITNESS: No architect, okay,
12 gives detail of how to pour concrete, just
13 like no cook is going to give detail of,
14 you know, where you pour the food to a pan
15 or something else. Everybody has their
16 own -- their own thing that they are
17 specializing in.

18 The concrete guy has the concrete.
19 The architect doesn't give the detail what
20 kind of forms to use or how to use them,
21 and how to pour it, if you pour it with
22 your hands or, you know, if you pour it
23 with something else. This is, like, all
24 of these details, no architect gives those
25 details.

1 Q The plans that you got from Sharon
2 were they written or oral?

3 MR. POLISHOOK: Objection to form.

4 THE WITNESS: It was written.

5 Q Were they submitted to the Building
6 Department for approval?

7 MR. POLISHOOK: Object to form.

8 What plans are you even talking
9 about?

10 MR. GALLIN: Eric --

11 Answer the question.

12 THE WITNESS: I don't remember when
13 those plans were given, but I do know that
14 during that date the plans were not
15 approved.

16 Q Had they been submitted to the
17 Building Department for approval before the
18 date of the accident?

19 MR. POLISHOOK: Objection to form.

20 THE WITNESS: I don't remember.

21 Q Had you gotten from Sharon before the
22 date of the accident?

23 A Yes.

24 Q How were Sharon's plans different
25 than the prior architect's plans?

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1 MR. POLISHOOK: Objection to form.

2 Rick, there is testimony he doesn't
3 even speak English -- read English. So
4 you need to set a foundation as to any
5 basis he has to even read plans. It's not
6 proper.

7 MR. GALLIN: It's not proper because
8 you don't like the way the testimony is
9 going.

10 MR. POLISHOOK: No, no. Rick, it's
11 not -- there is no foundation. He can
12 answer the question.

13 MS. HATCH: Can I have the question
14 read back.

15 MR. POLISHOOK: There is no reference
16 to what plans, there is no reference that
17 he has any way to view plans, or he also
18 testified he doesn't read English.

19 He can answer the question. I
20 haven't stopped him from answering the
21 question.

22 MR. GALLIN: Fine. Your objection is
23 noted, let him answer the question.

24 Q How were Sharon's plans different
25 than the existing plans, if you know?

1 A I will know it was different. He
2 gave me details to do concrete.

3 Q What details did Sharon give you
4 concerning the concrete?

5 MR. JUDD: Object to form.

6 THE WITNESS: Which rebar to use, and
7 how many inches the concrete needs to be.

8 Q Prior to the date of the incident had
9 you poured any other concrete walls at that
10 project?

11 A Yes.

12 Q Where had you poured walls?

13 A The same wall, first and second
14 floor.

15 Q So the first and second wall was
16 poured concrete?

17 A Yes.

18 Q Who was pouring the concrete?

19 A Same guy.

20 Q Are they sitting at the table?

21 A Yes.

22 Q Orange County Concrete?

23 A Yes.

24 Q Do you know who Cova Concrete is?

25 A I met with Joel, I spoke to Joel, and

1 with him I closed the contract.

2 Q Did you have a contract with Cova
3 Concrete?

4 A Yes.

5 Q What was your contract with Cova
6 Concrete for?

7 A The work that has to be done.

8 MS. HATCH: I ask for production of
9 the Cova Concrete contract. I have not
10 seen one in this case.

11 (Request for production.)

12 Q Is the contract with Cova Concrete
13 written or oral?

14 A It was supposed to be written.

15 Q Was it written?

16 A From what I remember, yes.

17 Q Cova Concrete, are they Hasid?

18 The guys sitting at the table, that's
19 Orange County Concrete; right?

20 A If, you know, if it's the same name,
21 this person, Orange County, if it's the same
22 name then that's him.

23 MS. HATCH: Can you just clarify for
24 me whether this witness is saying that HSD
25 Rabsky had a contract with Cova or he

1 thinks there was some contract with Cova.

2 Q Did HSD have a contract with Cova, or
3 was Cova's contract through your subcontractor,
4 Orange County?

5 MS. HATCH: Objection to form.

6 THE WITNESS: I don't know what was
7 going on between other companies. I had a
8 deal with this person siting right there
9 at the table, and this, whatever, if this
10 person got a contract with other
11 contractors, I have a contract with this
12 person.

13 MS. HATCH: Can we get a confirmation
14 that he is not saying he had a contract
15 with Cova.

16 Q Mr. Rabinowitz, your only concrete
17 contract was with the gentlemen sitting at the
18 table, Orange County Concrete?

19 MR. KULLER: Objection.

20 THE WITNESS: Yes.

21 Q If they subcontract the concrete to
22 other people, this you don't know about?

23 A No.

24 Q If they had somebody else supplying
25 the concrete to them, this is also something

1 you don't know about?

2 A No.

3 MS. HATCH: No, he doesn't know, or
4 no there is no contract?

5 MR. GALLIN: No, he doesn't know is
6 the way I understand his testimony.

7 Fran, ask the question. Ask the
8 question the way you want it asked. This
9 is your stage, go ahead.

10 MS. HATCH: Sir, a bit earlier in
11 your testimony you said that you heard of
12 somebody by the name of Cova Concrete; is
13 that true?

14 THE WITNESS: What I stated before
15 was that I had a deal with this person
16 sitting at the table, this is a person who
17 I had a deal with. If somebody else took
18 a sub or used other companies, then I
19 don't know about it.

20 MS. HATCH: All right. So up until
21 the time of the accident in this case, the
22 only company you were working with respect
23 to concrete was Orange County Concrete,
24 the people here at the table; is that
25 correct?

1 MR. KULLER: Objection.

2 THE WITNESS: Yes, I know that when
3 there was the accident, he was there, not
4 somebody else.

5 MS. HATCH: And I know that because
6 we have a lawsuit pending and there
7 certain names of it, and you may have
8 learned things since the accident, but I'm
9 asking for your knowledge before the
10 accident in question.

11 Before the accident in question had
12 you ever heard of a company named Cova
13 Concrete?

14 THE WITNESS: No.

15 MS. HATCH: Thank you.

16 Q On how many different days were the
17 concrete walls being poured next to 48 before
18 the incident happened?

19 MR. JUDD: Object to form.

20 I assume you're only referring to
21 that one wall.

22 MR. GALLIN: That's the only wall I
23 care about.

24 MR. JUDD: Okay. The one wall that
25 was adjacent to the adjoining property?

1 MR. GALLIN: Yeah.

2 MR. JUDD: Okay.

3 MR. GALLIN: I'm trying to find out
4 was it done in one day or done in
5 different days.

6 MR. JUDD: Okay.

7 THE WITNESS: Which wall, the first
8 floor, second floor, third floor?

9 Q Was the first floor, second floor and
10 third floor, were they poured on different days
11 or on the same day?

12 A A few days.

13 Q Had Orange County Concrete done any
14 work at that construction site other than the
15 wall next to 48?

16 A I'm not sure. In the contract they
17 were supposed to do the elevators as well, but
18 you know, I'm not sure what they did. I think
19 they did.

20 Q Were you there every time Orange
21 County was there doing work?

22 A I wasn't standing there the whole
23 time, I come and go.

24 Q Did you see them doing work?

25 A Yes.

1 Q Was the way they poured the concrete
2 the same for the first floor, for the second
3 floor as it was for the third floor?

4 MS. HATCH: The walls for the first
5 floor, the second floor and the third
6 floor.

7 MR. KULLER: Objection.

8 MR. JUDD: Objection as well.

9 THE WITNESS: I didn't check before
10 the concrete was formed, but after it was
11 formed I checked and I saw that it was
12 poured all the same way.

13 MR. KULLER: Can you read that back,
14 the answer and the question.

15 (The question and answer were read back.)

16 Q Was there a truck out in the street
17 delivering the concrete?

18 A Yes.

19 Q Who that truck belonged to you don't
20 know; right?

21 A No.

22 MS. HATCH: I'm only objecting to
23 form in so far as your question appears to
24 assume it was the same concrete provider
25 on each day. And it's my understanding

1 that was not the case.

2 MR. GALLIN: He just said he has no
3 idea. But it doesn't matter. He just
4 said he doesn't know who the truck
5 belonged to.

6 MS. HATCH: But just so you know.

7 MR. GALLIN: Thank you.

8 Q Concrete was delivered through hoses?

9 A There was a pump and they put that
10 pump up on every floor that was needed.

11 Q Were they using rebars?

12 A Yes.

13 Q Who put the rebars up?

14 A The guy that does the concrete.

15 Q Was there a form for the concrete?

16 A Yes.

17 Q What did they use as a form for the
18 concrete?

19 MR. KULLER: Objection.

20 MS. HATCH: For the walls; correct?

21 MR. GALLIN: It's wet concrete, there
22 has to be a form.

23 MS. HATCH: Off the record.

24 (Discussion off the record.)

25 Q Mr. Rabinowitz, do they pour the

1 floors as well as the walls?

2 A No.

3 Q Just the walls?

4 A They were supposed to pour the floor
5 also, but the floor was poured in a different
6 way.

7 Q The first floor, what was poured --
8 did they have to pour a first floor for the
9 floor?

10 A Let me explain to you how that works.

11 Q Okay.

12 A When you have to pour concrete on a
13 ceiling, you have to have some kind of
14 something, some support structure. And the
15 support structure is steel -- if you build
16 concrete, you have to do a support structure
17 that will support eight inches of concrete.

18 Q That's for the floors?

19 A This building was different, because
20 it was steel. There is decking on the steel,
21 and this is the support structure for the
22 concrete. From the concrete. And then because
23 of that, you only pour four inches. It's the
24 way the plan shows.

25 Q Four-inch floor?

1 A Yes.

2 Q How many floors, horizontal floors
3 did Orange County pour before the accident?

4 A I don't remember.

5 Q Did they have to pour a floor for the
6 first floor?

7 A The first floor was supposed to have
8 parking, that was the last thing.

9 Q What was the order in which they
10 poured -- the walls was not a horizontal pour,
11 the wall was a vertical pour; correct?

12 MR. KULLER: Objection.

13 THE WITNESS: Yes.

14 Q Was there any particular order as to
15 whether they did the horizontal pours or the
16 vertical pours first?

17 MR. KULLER: Objection.

18 THE WITNESS: If you mean if that
19 makes a difference with the building, no.

20 Q How was it actually done here,
21 though?

22 A I don't remember.

23 Q At the time of this incident they
24 were doing a vertical wall on the third floor?

25 MR. KULLER: Objection.

1 THE WITNESS: Yes.

2 Q Had they already done a vertical wall
3 on the second floor?

4 MR. KULLER: I have a standing
5 objection for every single question that
6 has to do with pouring concrete.

7 MR. GALLIN: Great.

8 MR. KULLER: Then I don't have to
9 object. The reason is because you're
10 saying that -- and as far as we're
11 concerned, HSD as much as Orange County
12 was pouring concrete. So that's the basis
13 for my objection, and then I don't have to
14 interrupt.

15 MR. GALLIN: Fine. Your objection is
16 noted.

17 MR. JUDD: And of course it's our
18 position that we weren't pouring.

19 Q Let me ask you a question.
20 Was there somebody standing there with a
21 hose directing the concrete?

22 A What's the question?

23 Q Concrete starts in a truck; correct?

24 A Yes.

25 Q How does the concrete get from the

1 truck to inside the building?

2 A There is a few ways that you could do
3 that.

4 Q How was it done here?

5 MR. JUDD: If you know.

6 MR. GALLIN: He was there, he saw.

7 A I don't know.

8 MR. JUDD: Well, he wasn't there
9 every time.

10 Q Did you ever see concrete coming out
11 of something that started in the truck and was
12 ending up in the building?

13 A Yes.

14 Q Tell me what you saw, over your
15 attorney's objection, who says you didn't see.

16 MR. JUDD: No, no, I said it's
17 mischaracterization to say that he was
18 there at the time that this occurred.

19 MR. GALLIN: I didn't --

20 Q Tell me what you saw.

21 A The accident?

22 Q No. Did you ever see Orange County
23 doing work at the job site?

24 MR. JUDD: Every --

25 Q From the beginning of time to today,

1 did you ever see them doing work at the job
2 site, from the time of Adam?

3 MR. POLISHOOK: Stop screaming.

4 MR. GALLIN: Object.

5 THE WITNESS: Yes.

6 Q What did you see?

7 MR. GALLIN: I'm tired of the
8 frivolous objection. Every frigging
9 question there's an objection, it's
10 ridiculous.

11 MR. POLISHOOK: I didn't object, you
12 don't need to scream at him.

13 MR. GALLIN: I'm not screaming at the
14 witness.

15 Q What did you see?

16 A When he was pouring the floor, he was
17 pouring directly from the truck to the floor.

18 Q Was there a hose, was there some sort
19 of connection between the truck and the floor?

20 A Pump. That's the pump.

21 Q And the guys using the pump, were
22 they HSD guys or were they Orange County
23 Concrete guys?

24 A The concrete guys.

25 Q Thank you. So your people didn't

1 physically do the concrete work; did you?

2 A Right.

3 Q The actual physical labor, the guys
4 using their muscles, were the Orange County
5 Concrete guys?

6 A That was their job, yes.

7 Q So how was the concrete getting from
8 the truck when they were doing the vertical
9 pours?

10 MR. JUDD: Was it the same thing?

11 A If you did the same thing.

12 Q You have concrete in a truck;
13 correct?

14 A Yes.

15 Q You have concrete in the truck, and
16 the truck is in the street; correct?

17 A Right.

18 Q And somehow the concrete has to get
19 up to the third floor level; correct?

20 A Yes.

21 MS. HATCH: Can we go off the record
22 for a second?

23 MR. GALLIN: What?

24 (Discussion off the record.)

25 Q We just had an off-the-record

1 conversation which may have been helpful in
2 directing this.

3 Was there more than one truck involved in
4 the concrete?

5 A The question is how much concrete is
6 needed. Sometimes there was one, there was
7 two, there was three, sometimes even twenty.

8 Q Was there one of those big concrete
9 mixing trucks mixing the concrete?

10 A She explained before very well, there
11 is a truck that brings the concrete and then
12 there is a pump that takes the concrete and
13 brings it to whatever place that it's needed.

14 Q The reason why you had to say it is
15 because you're the witness and she can't
16 testify.

17 So I'm going to ask you a question, if you
18 can explain what she said as you as a witness,
19 that would be helpful.

20 Can you explain how the concrete pump
21 worked?

22 A So the truck, the concrete truck
23 pours it into a trough, which is like a pump,
24 and then by air pressure that pump brings it to
25 whatever floor is needed.

1 Q Did they need the pumping truck for
2 the first floor pour?

3 A For the floor pour; right?

4 Q For the first floor.

5 A No.

6 Q For the second or the third floor
7 they needed a pumping truck?

8 A Yes.

9 MR. JUDD: When you say the second or
10 third floor, are you talking about the
11 wall or are you talking about the floor
12 itself?

13 MR. GALLIN: Either one.

14 MR. JUDD: Well, is it the same
15 answer?

16 THE WITNESS: Yes.

17 Q Now with the air pump is there some
18 sort of hose that the concrete goes through to
19 get to the second or third floor?

20 A It gets to the pipe, and then from
21 that it goes to the pump and from there it goes
22 to the floor.

23 Q From the pumping truck to inside the
24 building is there some sort of pipe or some
25 sort of hose?

1 A Yeah, there is a hose.

2 MR. GALLIN: Let's take a break now,
3 it's one o'clock.

4 (Lunch recess, 1:02 to 1:54.)

5 BY MR. GALLIN:

6 Q Now you had previously said that you
7 had a set of plans which gave the option
8 between a concrete wall and poured concrete.

9 A Yes.

10 Q Do you know where those plans are?

11 A No.

12 Q Who gave you those plans?

13 A Gold.

14 Q Did you discuss with Gold or anyone
15 else which option to pick?

16 A No.

17 Q Who made the -- we're talking about
18 the plans for the walls, vertical walls between
19 50 and 48. Okay?

20 A Yes.

21 Q Who made the decision as to go with
22 poured concrete instead of cement block?

23 MR. POLISHOOK: Object to form.

24 MR. JUDD: Me, too.

25 MR. GALLIN: I would object, too, but

1 I asked the question.

2 Q Who made the decision?

3 A I did.

4 Q When did you make the decision?

5 A Before the start of the work.

6 MR. KULLER: Before who started the
7 work?

8 THE WITNESS: The concrete guy.

9 Q What factors, what went into the
10 decision, your decision to use the poured
11 concrete?

12 MR. POLISHOOK: Object to form.

13 THE WITNESS: So what happened was
14 there was a -- I made a decision to do the
15 concrete. What happened was there was --
16 from before there was a steel structure
17 and there was concrete already poured
18 previously, but I saw that that wall is
19 not strong enough if the wind hits the
20 building.

21 So I had three ways to fix the
22 situation. I could either build some more
23 steel to make the structure stronger, I
24 could either use the block, but the block
25 method did not seem like the right method,

1 because then I would have to pour the
2 concrete into little holes. And I had a
3 concrete method.

4 So, to me, the concrete method seems
5 the best method and the strongest method
6 and the easiest method to execute.

7 Q When you said pouring concrete into
8 little holes, did you mean pouring concrete
9 into the holes in the cinderblocks?

10 A Yes. You had to use the blocks and
11 use the rebar, and then fill the blocks full.

12 Q You said the wall being hit by the
13 wind. Which wall were you referring to?

14 A The wall on the sides, which was
15 supposed to be concrete.

16 Q Would wind hit the wall between 50
17 North and 48 North?

18 A You know, the point is not the wall
19 against the wind, the point is when you build a
20 building you have to make sure that the whole
21 entire building is strong enough to withstand a
22 certain amount of wind. It's not just a wall,
23 it's the whole building has to be strong enough
24 to withstand a certain amount of wind.

25 Q Along First Street, the front of the

1 building, you had to build a wall there, too?

2 A That there is built heavy gauge
3 metal.

4 Q What was the front wall of the
5 building made out of?

6 A Heavy gauge metal frame.

7 Q And what would fill in the frame?

8 A Insulation and sheetrock.

9 Q So the actual exterior wall of the
10 building was metal?

11 A On that they were supposed to put
12 part of it stucco and part of it should be
13 bricks.

14 Q So you would have stucco and brick
15 veneer over the metal for the front of the
16 building?

17 A That was supposed to be.

18 MR. JUDD: In the front of the
19 building?

20 Q How long before the incident
21 happened -- do you remember the day the
22 incident happened?

23 A Not exactly.

24 Q Do you remember it was the first week
25 of June 2009?

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1 A Not exactly.

2 Q How long before the incident happened
3 did you hire Orange County Concrete?

4 A A few weeks.

5 Q Did you make the decision to go with
6 the poured concrete instead of the cement
7 blocks before or after you hired Orange County
8 Concrete?

9 A Before.

10 Q Did you make the decision to go with
11 the poured concrete before or after Sharon
12 became involved with the building?

13 MR. POLISHOOK: Objection to form.

14 THE WITNESS: He was the engineer
15 that I went through all of the details of
16 what would be best.

17 MR. POLISHOOK: Move to strike as
18 nonresponsive.

19 Q Did Sharon participate in the
20 decision to go with the poured concrete?

21 MR. POLISHOOK: Object to form.

22 THE WITNESS: He gave me the options
23 and I decided by myself.

24 Q Was he part of the discussion?

25 MR. POLISHOOK: Objection to form.

1 He just answered.

2 THE WITNESS: What do you mean by
3 participated?

4 Q Before you made your final decision
5 had you gone over the various options with
6 Mr. Sharon?

7 MR. POLISHOOK: Objection to form.

8 THE WITNESS: He explained the
9 options to me. He explained to me the
10 three ways to deal with the problem that
11 the building had, and I made a decision as
12 to which option to take.

13 Q Did Sharon make any recommendation as
14 to which was the best option?

15 MR. POLISHOOK: Objection to form.

16 THE WITNESS: No.

17 MR. KULLER: Could you read back the
18 last question and answer, please.

19 (The question and answer were read back.)

20 Q I believe you had previously
21 testified that Sharon prepared some
22 specifications for the poured concrete?

23 MR. POLISHOOK: Objection to form.

24 Just let him testify --

25 THE WITNESS: He wrote out a plan